The learned Magistrate seems to have overlooked the footnote to the first part of the passage quoted by him from Ratanlal which reads as follows: "This decision does not seem to be a sound one. If a wife removing the separate property of her husband is guilty of theft, there is no reason why she should not be guilty of criminal breach of trust in respect of such property." The learned Magistrate does not seem to have given any consideration to the status of the defendant and her husband, that is whether they are Muslims; no evidence had as yet been adduced by the prosecution as to the status of the accused and if and when such evidence is adduced the question that will arise for consideration is whether the husband and wife have joint ownership.

In English law the position is clear; at common law husband and wife are one person in law and the wife cannot steal her husband's goods; but under certain sections of the Married Women's Property Act, 1882 a wife may be guilty of stealing her husband's goods in certain circumstances.

But such unity of interest as there is between husband and wife in English law, does not, in my opinion exist as between husband and wife who profess the religion of Islam, and in Indian cases it has been laid down that a Mohamedan wife may be convicted of stealing from her husband. Thus in *Reg. v. Khatabai, wife of Sheik Ismael*[1], it is stated:

"The act admitted by the accused woman amounts to abetment of theft, and, under section 114 of the Indian Penal Code, she may be deemed to have committed theft. The female in question was a Muhammadan, and consequently there was not between her and her husband the same union of interest which exists between an English husband and wife (vide *Baillie's* Digest of Muhammadan Law, introduction xxiv, and p. 145); and among the list of articles removed with the abetment of the wife there are some which under that law would be recognised as the exclusive property of the husband."

In my opinion, in Mohammedan law there is not such community of interest between husband and wife as to make theft or criminal breach of trust; impossible.

I, therefore, set aside the order made by the learned Magistrate with a direction that the case be referred back to the Magistrate for continuation of the proceedings.

Order accordingly.

CHUA SAI NGOH (f) v. BEH AI MENG

[O. C. J. (Thomson J.) May 19, 1955]
[Ipoh — Civil Suit No. 115 of 1954]

Landlord and Tenant — Land — Claim for possession — Whether a plank-walled house built on concrete platform part of land or chattel — Disclaimer of landlord's title — Tenant saying landlord owner of land but not of house — Whether sufficient disclaimer — Land Code (Cap. 138), s. 42(v) — Yearly tenancy — Notice to quit.

This was a claim by the plaintiff for a declaration that she was the lawful owner of certain houses built on land belonging to her and for possession of the said houses. The houses were plank-walled houses built on concrete platforms and were built by the defendant before the purchase of the land by the plaintiff. The defendant had been paying rent to the plaintiff at the end of each year for his occupation of the land. In 1953 the plaintiff had a quarrel of some sort with the defendant, and subsequently she wrote a letter to the defendant purporting to give him a month's notice to quit the premises.

The defendant contended that the plaintiff was only the owner of the land but not of the houses. The plaintiff alleged that the defendant's conduct amounted to disclaimer of her title and therefore no notice to quit was required.

Held: the houses in question were part of the land on which they stood and were thus the property of the proprietor of the land, the plaintiff.

[**Editorial Note:** at the conclusion of the judgment, which is not reproduced in this report, His Lordship dealt with the questions of orders for ejectment and possession, and decided that she could not succeed because in this case by claiming to be the owner of the houses the defendant had not repudiated the relationship of landlord and tenant, and that it was not a sufficient disclaimer which could justify his ejectment without notice, and that as it was an annual tenancy it could only be determined by giving half a year's notice to quit.]

Cases referred to:—

(1) *In re Tiambi bt. Ma'amin* (1904), Innes 285.
(2) *Goh Chong Hin & Anor. v. Consolidated Malay Rubber Estates Ltd.* 5 F.M.S.L.R. 86.
(3) *Kiah binte Hanapiah v. Som binte Hanapiah* (1953) M.L.J. 82.
(4) *Harnam Singh v. Sambasivam* (1954) M.L.J. 251.
(5) *Kwek Kim Hock v. Ong Boon Siong* (1954) M.L.J. 253.
(6) *Kartar Singh v. Pappa* (1954) M.L.J. 193.
(7) *Wake v. Hall* (1882 — 1883), 8 App. Cas. 195.
(8) *Sayer v. Phillipson* (1931) 2 Ch. 183, 209.
(9) *Leigh v. Taylor* (1902) A.C. 157, 162.
(10) *Billing v. Pill* (1953) 2 All E.R. 1061; (1953) 3 W.L.R. 758; (1954) 1 Q.B. 70.

CIVIL SUIT.

N. Sharma for the plaintiff.

W. J. Huntsman for the defendant.

Cur. Adv. Vult.

Thomson J. : — The principal question at issue in this case relates to the ownership of three houses on certain land on Pangkor Island and that question in its turn raises the question of whether these houses are movable property or whether they are immovable property attached to and forming part of the land on which they are built.

[His Lordship then stated the history of the houses and facts of the case which are not relevant for the purposes of this report and continued:]

I propose in the first place to deal with the question of the ownership of the houses.

When the plaintiff became the registered proprietor of the land she acquired an indefeasible title to the whole right, title and interest in it subject to any registered interests (of which there were none) and subject to such unregistered interests as are protected by section 42(v) of the Land Code. By definition (section 2) "land" includes things attached to the earth or permanently fastened to any thing attached to the earth. The question here, therefore, is whether the houses in question are attached to the earth.

This is a type of question which, in view of the sort of houses occupied by large sections of the local population, one would have expected to have attracted considerable attention in the Courts. There is, however, not a great deal of authority on the point.

Apart from one or two old cases in the Straits Settlements, the question would seem to have been first considered by the Senior Magistrate, Selangor & Negri Sembilan, in the case of *In re Tiambi binti Ma'amin*[1]. That was a case where a house which was presumably of the ordinary Malay type, though the report does not say so, had been attached as movable property under section 290 of the Negri Sembilan Civil Procedure Code and the attachment was appealed against. There were other grounds of appeal and the only passage in the Judgment which deals with the question of whether the house was movable property or not reads as follows :—

"The first ground of appeal is that the house in question is not movable property and therefore not attachable under s. 290 of the Civil Procedure Code. In view of Bimbang's statement that she intended to take away the house piecemeal and build it afresh on her own land and of the wellknown fact that up-country Malays frequently remove their houses from one place to another. I see no reason to dissent from the Magistrate's view of this point."

In the case of *Goh Chong Hin and S. R. M. S. Lechmanan Chetty v. The Consolidated Malay Rubber Estates Limited*[2] the Court of Appeal was concerned with the question of whether certain machinery was a fixture. They proceeded on a consideration of the definition of land in the Land Code and came to the conclusion that the law relating to fixtures was the same in the Federated Malay States as in England and that *Tiambi's*[1] *case, supra* must be looked upon as an exception to the rule made in deference to special local custom.

In the case of *Kiah binte Hanapiah v. Som binte Hanapiah*[3] it was held by the Court of Appeal that houses of the Malay type resting on stilts not buried into the earth are movable property. It was said by Sir Charles Murray-Aynsley C.J., Singapore :—

"I consider that there is a settled custom in this country that houses of this type are regarded as personalty in which ownership may be separate from ownership of the soil. I do not know of any judicial authority on the matter, but, in the course of fifteen years that I have been in the country I have always found that this custom was accepted. I think that effect should be given to this custom to the exclusion of the English law of fixtures."

In the case of *Harnam Singh v. K. V. Sambasivam*[4] Spenser Wilkinson J. considered but did not decide the question in relation to a plank house with an attap roof.

In the Singapore case of *Kwek Kim Hock v. Ong Boon Siong*[5] the defendant had rented a piece of vacant land and on it had erected at his own expense a wooden building on a concrete platform. Taylor J. dealt with the matter in the following passage :—

"Counsel for the plaintiff questioned the proposition that land and building on it can be owned separately, the landlord owning the land only and the tenant owning the building, so that if the tenant receives a valid notice to quit he may dismantle the building and re-erect it elsewhere. This is a common incident in the country districts of Malaya and is a well-established variation from the principle of English law that a building becomes the property of the owner of the land"

and at a later stage appears to have held without giving any further reasons that the defendant was the owner of the building in question.

Finally I refer to the case of *Kartar Singh v. Pappa*[6] in which I am said to have held that a dwelling house with plank walls and cement floor being a house attached to and so forming part of the land on which it stood, was something which could not by itself be seized and sold. I only mention the case to make it clear that I do not think that I decided anything of the sort and that in any event such a question was not in issue in the actual case before me. That, of course, is not to say that I would not have decided as I am said to have done had I been required to give a decision on the point.

By reason of the decision of the Court of Appeal in *Goh Chong Hin's*[2] *case, supra,* which is a decision of more than 30 years standing, it is clear that the law in the Federation, whatever may be the position in Singapore, as to when chattels become part of the land within the meaning of the Land Code is substantially the same as the law of England.

The general principle of the English law is embodied in the maxim of *Gaius "quicquid plantatur solo, solo cedit"*, although the rigour of that maxim has been mitigated in favour of trade fixtures and later in the case of agricultural fixtures. It is based on the presumption that annexation of the chattels to the land is intended to be permanent. As was pointed out by Sproule C.J.C., in *Goh Chong Hin's*[2] *case, supra,* "if the nature, degree, and object of the annexation be such as to shew that the intention was to annex the chattels to the land only temporarily, then the general rule will not apply" and His Lordship later went on to point out that by reason of the decision in the case of *Wake v. Hall*[7] "proved custom, then, by itself can displace the presumption of intention of permanent

annexation." It is no doubt by reason of this exception in favour of 'proved custom' that the Courts in this country have exempted from the rigour of the rule Malay houses on stilts as in *Kiah's*[3] *case, supra.*

It would appear from the judgment of Taylor J., in *Kwek Kim Hock's*[5] *case, supra,* that in Singapore the custom in this connection is accepted by the Courts as covering a much wider class of buildings than in the Federation. That may well be but in view of the somewhat specialised nature of the facts in *Wake v. Hall*[7], *supra,* I do not think the Courts here would be justified in accepting any widening of the scope of the custom beyond what has been hitherto recognised except on the very clearest evidence.

The real difficulty in this type of case is not the ascertainment of the law but its application. As has been said the law is based on the presumption that the annexation was intended to be permanent and as was pointed out by Romer L.J., in *Sayer v. Phillipson*[8] there is really only one consideration "what was the object and purpose of the annexation?" The manner of annexation is only evidence by which it may be proved whether the object of the annexation was permanent or temporary. And as was said by Lord Macnaghten in the case of *Leigh v. Taylor*[9]: "The mode of annexation is only one of the circumstances of the case, and not always the most important — and its relative importance is probably not what it was in ruder or simpler times."

In the present case there are in evidence photographs of the houses in question which have stood on their present sites for some 37 and 32 years respectively. Originally they consisted of a framework of wooden uprights buried in the ground with walls of wooden planks and roofs of attap. At some time subsequent to their original erection the defendant cemented the floors and the pillars became embedded in the cement. There is not a scrap of evidence to shew that the defendant had at any time any intention of dismantling the houses and removing their component parts, and, indeed, his action in providing them with and embedding their uprights in the cement floors, which, to judge from the photographs, are very substantial and not mere skins of cement, would seem to negative the existence of any such intention. It is beside the point that he probably never regarded the buildings as the property of anyone but himself and it is beside the point that in his view, which he repeatedly urged on me, he was paying rent for the land only. I am quite prepared to believe that he is and at all times has been ignorant of the law. Nevertheless, it is clear to me that so far as anything human can ever be said to be permanent his intention was that these buildings should be permanent and that they should remain on the sites on which they are built.

Moreover, he can derive no assistance from anything connected with the mode of attachment of the buildings to the soil. The cement floors clearly cannot be removed without complete disintegration; the supporting pillars could only be removed after the disintegration of the floors and, as regards the walls and roofs, although, no doubt, they might be removed piecemeal, it seems to me that the pieces of material comprising them have completely lost their separate identity and that each house is to be considered as a single entity.

Again, I do not think he can derive any assistance from any sort of custom for there is no evidence to shew that there is in this country any custom permitting the dismantling and removing of houses of this type as in the case of old-fashioned conventional Malay houses on stilts and, as I have pointed out, in view of the decision in *Wake v. Hall*[7], *supra,* it would be difficult in the absence of very clear evidence to say that there was any such custom. No doubt large numbers of houses were dismantled and removed during the recent wholesale clearances of so-called squatters. But I very much doubt if many of these houses were of as substantial a nature as those in the present case and in any event as *ex hypothesi* the vast majority of them were on State land and as the removals were conducted by the State it can safely be assumed that the actual houses were dismantled and removed with the full consent of the owner of the land.

It is true that on this question of custom there is some evidence that some of the occupiers of the other houses on plaintiff's land purported to 'sell' their houses to new occupiers but it seems to me that the small payments made in this connection were nothing more than payments of what is known as 'tea money'.

Finally, I do not think the defendant can find any assistance in Lord Goddard's judgment in the case of *Billing v. Pill*[10] on which his counsel laid considerable stress for the building which was in issue in that case, an army hut on a concrete base, had been put where it was merely for a temporary purpose and was only attached to the concrete base by some bolts which had been inserted to stabilise or steady it.

It follows, then, that the houses in question are part of the land on which they stand and are thus the property of the proprietor of the land, that is to say, of the plaintiff and for what it is worth she must therefore have the declaration to that effect for which she asks.

[His Lordship then proceeded to deal with the questions of orders for ejectment and possession, which are not relevant for the purposes of this report.]

Order accordingly.

Solicitors: *N. Sharma; Maxwell, Kenion, Cowdy & Jones.*